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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,667	02/15/2002	Allon G. Englman	247079-000127USPT	2996
70243	7590	06/03/2010	EXAMINER	
NIXON PEABODY LLP			HSU, RYAN	
300 S. Riverside Plaza			ART UNIT	
16th Floor			PAPER NUMBER	
CHICAGO, IL 60606			3714	
			MAIL DATE	DELIVERY MODE
			06/03/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ALLON G. ENGLMAN

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Appeal 2010-002077  
Application 10/077,667  
Technology Center 3700

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 C.F.R. § 41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on December 7, 2009. A Docketing Notice was mailed and Appeal 2010-002077 was assigned on December 29, 2009.

Claim 37 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte Rodriquez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2,

2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf). Thus, there is a question as to whether claim 37 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 37, meets the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

mev

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